

REMARKS

With this amendment, claim 2 has been incorporated into claim 1. Support for claim 3 is found in original claim 1. Support for Claims 4 and 5 is found on page 5, lines 22-28. Support for claim 6 is found on page 12, lines 29-30. Support for claim 7 is found generally on page 11, lines 9-10. Accordingly, the amendments do not constitute the addition of new matter. Applicant respectfully requests the entry of the amendments and reconsideration of the application in view of the amendments and the following remarks.

Personal Interview

The undersigned thanks Examiner Hand for the productive interview of March 27, 2008 which is summarized herein.

Rejection under 35 U.S.C. § 102(b)

Claims 1 and 2 are rejected under 35 U.S.C. § 102 (b) as being anticipated by Argenta, et al. (US Patent No. 5,636,643) (hereafter Argenta '643).

The claims have been amended as discussed in the interview of March 27, 2008.

Claim 1 has been amended to specify that the flow of blood is arrested from an "active bleeding site". Support for the amendment is found in the present specification at page 12, line 23 to page 13, line 17 where the application of the vacuum instrument to an active bleeding site is described. The specification teaches that "the vacuum device 20 maybe utilized as a tamponade for bleeding tissue" (page 12, lines 23-24), for example application to an internal tissue during surgery (page 12, line 24 to page 13, line 4; Figure 14A). The vacuum instrument may also be used for exterior surfaces as well (page 13, lines 5-13).

Claim 1 has also been amended to specify "releasing the vacuum upon slowing or arresting the flow". Support is found in cancelled claim 2. Applicant asserts that it is clear from the present claim language that the vacuum is released as soon as the bleeding has slowed or stopped. The vacuum is not maintained after bleeding has been brought under control.

Support for claims 3-5 is as discussed above.

New claims 6 and 7 have been added which also relate to the timing of the release of the vacuum. Claim 6 recites that "the vacuum is released when the flow has slowed and the bleeding

site can be further treated”. Support for claim 6 is found on page 12, lines 29-30. Claim 7 incorporated the language suggested by the Examiner during the March 27th interview and is directed to immediate release of the vacuum once the flow has been arrested or slowed. Support is found generally on page 11, lines 9-10.

Argenta ‘643 do not teach all of the elements of claim 1 as amended.

Argenta ‘643 do not teach application of a vacuum to an active bleeding site. Indeed, Argenta ‘643 teach away from the claimed invention in teaching that if the patient starts to bleed, the vacuum should be shut off (col. 8, lines 27-41). In particular, that “[i]nterrupting the application of suction to the appliance 29 is desirable to prevent exsanguination in the unlikely event a blood vessel ruptures under the wound cover 18 during treatment” (col. 8, lines 31-34). Accordingly, Argenta ‘643 does not teach “positioning the opening of a vacuum cup over said the active bleeding site” as presently set forth in claim 1. Argenta ‘643 teach that the vacuum should be shut off if bleeding commences.

Furthermore, Argenta ‘643 do not teach “releasing the vacuum upon slowing or arresting the flow”. Argenta ‘643 teach that the “time period for use of the method on a wound may preferably be at least 12 hours, but can be, for example, extended for one or more days. There is no upper limit beyond which use of the method is no longer beneficial; the method increases the rate of closure up to the time the wound actually closes” (col. 12, lines 61-66).

While Applicant claims applying a vacuum to an active bleeding site until the bleeding is arrested or slowed, Argenta ‘643 would be unlikely to apply a vacuum to a bleeding site at all. To the extent that a wound may also be a bleeding site, Argenta ‘643 would maintain the vacuum for extended periods, at least 12 hours, and possibly until complete wound closure.

Furthermore, Example 9 of Argenta ‘643 teaches application of a vacuum to enhance blood flow, not arrest or slow blood flow as claimed by Applicant. Accordingly, Example 9 clearly teaches away from the claimed invention. There is no teaching in Argenta ‘643 that would lead one of ordinary skill in the art to apply a vacuum to an active bleeding site as claimed.

To the extent that Argenta ‘643 teach anything regarding the flow of blood, it is directed to enhancement of blood flow. See, e.g. Col. 1, lines 38-48; Col. 13, lines 37-41 and Example 9 at Col. 21, which is entitled “Enhancement of Blood Flow.” Argenta ‘643 also mentions that one

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of the dangers of the application of the vacuum to a wound is the aspiration of blood from the rupture of an underlying blood vessel. In that circumstance, Argenta recommends that the vacuum be shut off (col. 8, lines 27-41). This is in direct contrast to the present invention, which is directed to applying vacuum to an active bleeding site and releasing the vacuum upon slowing or arresting of the blood flow from the active bleeding site.

Claims 2-7 depend from claim 1 and include all of the limitation of claim 1. Accordingly, claims 2-7 are believed to be patentable over Argenta '643 at least for the reasons given above for claim 1. Furthermore, Argenta '643 clearly do not teach "the vacuum is released when the flow has slowed and the bleeding site can be further treated" (claim 6) or "the vacuum is released immediately once the flow has arrested or slowed" (claim 7) as Argenta '643 do not teach either applying a vacuum to stop or slow bleeding at an active bleeding site or stopping the vacuum once the bleeding has stopped or slowed as discussed above for claim 1.

In view of Applicant's amendments and arguments, reconsideration and withdrawal of the above ground of rejection is respectfully requested.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

CONCLUSION

In view of Applicants' amendments to the claims and the foregoing Remarks, it is respectfully submitted that the present application is in condition for allowance. Should the

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Examiner have any remaining concerns which might prevent the prompt allowance of the application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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